

STATE OF SOUTH DAKOTA



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MEMORANDUM

TO: All Interested Persons

FROM: Charles D. McGuigan, Assistant Attorney General *Charlie*

DATE: March 31, 2006

RE: Legislation passed by the 2006 Legislature

The 2006 South Dakota Legislature considered 458 pieces of legislation. The House introduced 248 bills and the Senate introduced 210 bills. The Governor signed 274 bills into law and one bill became law without signature.

The Attorney General directly introduced four pieces of legislation during the 2006 legislative session. The Legislature adopted three of the four bills. Senate Bill 57 would have revised the definition of deceptive acts and practices and increase the statute of limitations regarding deceptive trade practices. This bill failed on the House floor. Senate Bill 58 defines gamma hydroxyl butyrate ("GHB") to include analogs of GHB. Senate Bill 59 provides for the use of chemist's affidavits in certain parole, probation and contested case proceedings. Senate Bill 60 revises certain provisions concerning the licensure of polygraph examiners.

The Attorney General also worked with legislators on the introduction of four pieces of legislation. Senate Bill 82 would have provided for the appointment of a Native American law enforcement officer to the Law Enforcement Officers Standards Commission. This bill died in the Senate State Affairs Committee. Senate Bill 82 was introduced by Senator Adelstein. Senator Gant introduced Senate Bill 142 which directs the Office of the Attorney General to study open government issues in South Dakota. Senate Bill 78 was introduced by Senator Knudson and Representative Michels and revises certain provisions relating to the submission of direct legislation to a vote of the people at a general election. Finally, House Bill 1075 revises certain provisions relating to the deposition of confiscated weapons and firearms. House Bill 1075 was introduced by Representative Buckingham.

In addition to these bills, the Office of Attorney General participated in the Sex Offender Task Force which consisted of members of the Governor's staff, sheriffs, judges and legislators. As a result of the Sex Offender Task Force, five pieces of legislation were introduced and adopted by the Legislature. Senate Bill 148 revises certain provisions regarding the sex offender registry and supervision of sex offenders. Senate Bill 149 creates community safety zones, prohibits certain persons from residing or loitering in community safety zones and provides penalties for violations thereof. Senate Bill 150 requests the state's participation in the National Sex Offender Public Registry and provides for a state Internet sex registry site. Senate Bill 203 makes an appropriation for costs related to the statewide sex offender registry and declares an emergency. Senate Bill 208 establishes and enhances criminal penalties regarding certain sex offenders.

During the 2006 legislative session, the Attorney General's Office monitored ninety-three pieces of legislation, supported nineteen pieces of legislation and opposed nine pieces of legislation.

The Legislature passed the following bills and unless noted otherwise, the following will become law on July 1, 2006.

Senate Bill 1 provides for the mandatory withdrawal of blood or other bodily substances subsequent to arrest for driving while under influence. This bill repeals South Dakota's implied consent provision and no longer gives a driver an option to refuse to submit to the withdrawal or chemical analysis of blood or other bodily substances. An arrest for DUI must occur before the officer can require a mandatory test.

Senate Bill 28 revises and corrects certain provisions related to the criminal code revision of 2005. Primarily the bill amends and updates various sentencing and parole provisions to reflect the addition of the Class C felony.

Senate Bill 40 revises certain provisions regarding the regulation of weighing and measuring devices and the regulation of service agencies of weighing and measuring devices. The bill repeals several sections dealing with the regulation of weighing and measuring devices and authorizes the Secretary of the Department of Public Safety to implement administrative rules for the regulation of these devices. The bill also lowers the misdemeanor level for condemned or rejected devices.

Senate Bill 55 modifies the process for state highway road closures due to inclement weather. Under the bill the Secretary of Transportation and the Secretary of Public Safety will now

make a joint decision concerning the restriction of use or closing of roads due to inclement weather.

Senate Bill 58 defines gamma hydroxyl butyrate to include gamma-butyrolactone, 1.4-butanediol or any other substances which convert to GHB upon ingestion. The bill excludes products which are lawfully used for mechanical, industrial, manufacturing, or scientific purposes.

Senate Bill 59 provides for the use of chemist's affidavits in certain parole, probation, and contested case proceedings.

Senate Bill 60 revises certain provisions concerning the licensure of polygraph examiners. The bill changes the current one-year twenty-five dollar license to a three-year seventy-five dollar license.

Senate Bill 63 defines federal law enforcement officer under SDCL 23A-3-24 to include officers of the Immigration and Customs Enforcement Office of Investigations.

Senate Bill 81 prohibits the acquiring or selling of certain communication records. The bill makes it a Class 1 misdemeanor for any person to obtain or attempt to obtain confidential communication record information from a communication provider. The bill makes it a Class 6 felony for anyone to knowingly and intentionally sell or attempt to sell confidential communication record information without authorization from the customer. Confidential communication record information is information that relates to the quantity, technical configuration, type, destination, incoming calls, outgoing calls, text messaging, location, or amount of use of a service offered by a communications provider subscribed to by a customer of that communications provider.

Senate Bill 98 limits the transfer or renewal of certain alcohol beverage licenses. Specifically alcohol beverage licenses cannot be renewed or transferred unless the business is current on all municipal and state sales and use taxes, unemployment insurance or any other state tax.

Senate Bill 99 establishes a task force to study sexual assault and to provide for its composition, scope, and administration. The task force will include fifteen members, eight of whom shall be legislators and shall also include a law enforcement officer, victim advocate, medical personnel, survivor of sexual assault, a representative of DCI, the Department of Health, and Department of Social Services. The task force shall gather the data and information regarding sexual assault cases in the following areas: reporting to law enforcement, numbers and types of cases, investigations, available medical treatment, collaboration among agencies, prevention efforts, and emergency

responses. The task force shall make recommendations to assist local entities in responding to and preventing sexual assault cases and shall submit its final report to the Governor and Legislature no later than December 1, 2006.

Senate Bill 109 provides for statewide mutual aid requests among certain public agencies. Specifically the bill applies to the state, any state agency, the United States or any of its agencies, any county, municipality, township or other political subdivision of the state and tribal governments located within the state. The bill allows for the provision of personnel, equipment, expertise, supplies, or other products or services except for financial assistance.

Senate Bill 142 directs the Office of the Attorney General to study open government issues in South Dakota. The Attorney General must report his findings and recommendations to the Executive Board of the Legislative Research Council by June 30, 2007.

Senate Bill 148 revises certain provisions regarding the sex offender registry and the supervision of sex offenders. The bill raises all registration crimes from a Class 1 misdemeanor for a first offense to a Class 6 felony. The bill shortens the registration time from ten days to five days. Section 4 requires the chief of police or the sheriff to annually confirm that the address listed on the registry matches the residence of each sex offender. Section 6 requires each offender to register every six months instead of the current annual registration. Section 7 requires the collection of palm prints in addition to fingerprints, the date the offender established their residency, vehicle license plate number, Internet account information, and a listing of all felony convictions. The section also requires a description of the offense to be provided by the prosecuting attorney. Also the offender must acknowledge whether the offender is currently an inmate or parolee; acknowledgement of whether the offender is subject to community safety zone restrictions; and the name, address and phone number of two local contacts who have regular interaction with the offender. This section also requires the registering agency to collect a DNA sample from the offender at the time of registration and to submit the sample to the South Dakota State Forensic Laboratory. Section 8 of the bill clarifies that offender's registration compliance status and registration information is public information. This section exempts the registrant's social security number, the victim's name, DNA sample, and the names, addresses and phone numbers for the local contacts and next of kin. The section also removes the restriction that sex offender information held by the Division of Criminal Investigation is not subject to public inspection. Section 10 makes all second and subsequent offenses a Class 5 felony. Section 12 allows a sentencing judge to provide special conditions including limited

areas of residence or community access, required participation in treatment, enhanced reporting requirements, and use of electronic monitoring or global positioning units. Section 13 allows the Board of Pardons and Paroles to implement the same conditions upon a parolee. Section 14 provides immunity to law enforcement agencies and employees for carrying out their duties under this act in good faith.

Senate Bill 149 creates community safety zones and prohibits certain persons from residing or loitering in community safety zones. The bill defines a community safety zone as that area that lies within 500 feet from the facilities and grounds of any school, public park, public playground or public pool. The Act makes it a Class 6 felony for a sex offender to reside within a community safety zone and a subsequent violation is a Class 5 felony. The bill exempts persons who are currently incarcerated or placed in a health care facility, juvenile offenders and persons who had established residences prior to the effective date of the Act. The bill exempts person who in the future find themselves in a community safety zone because a school, public park, public pool or public playground was built or established subsequent to the person establishing residence at the location. The Act allows an offender to petition the circuit court to be removed from this restriction and the court may allow for an exemption from the community safety zone if the court finds by clear and convincing evidence that at least ten years has elapsed since the date of conviction, that the petitioner is not a recidivist, that the petitioner has completely and truthfully complied with registration and re-registration requirements, that the petitioner has actually resided in South Dakota for at least ten consecutive years prior to filing the petition and that the circumstances of the crime subjecting the offender to community safety zone restrictions did not involve a child under the age of thirteen. Finally, the bill makes it a Class 6 felony for any person required to register as a sex offender to loiter within a community safety zone. A subsequent offense is a Class 5 felony.

Senate Bill 150 requires the state's participation in the National Sex Offender Public Registry and authorizes the Attorney General to begin operation of a statewide public Internet sex registry site.

Senate Bill 156 prohibits the picketing of funerals. The bill makes it a Class 2 misdemeanor to picket a funeral service from one hour before the scheduled commencement of the funeral service until one hour after the actual completion of the funeral services unless the protestors remain at least 1000 feet from the funeral service. This Act became the law on February 13, 2006.

Senate Bill 159 prohibits state's attorneys from collecting a civil penalty for prosecuting a dishonored check and prevents state's attorneys from assigning a check for civil collection.

Senate Bill 180 requires consumer reporting agencies to provide security freezes for consumers who are victims of identity theft.

Senate Bill 203 makes an appropriation for costs related to the statewide sex offender registry. This act became law on February 24, 2006.

Senate Bill 207 revised certain provisions pertaining to the sale, purchase, and possession of products containing pseudoephedrine or ephedrine. The bill limits retailers who can sell pseudoephedrine or ephedrine to those retailers who are licensed by the Board of Pharmacy to sell nonprescription drugs. The bill removes exclusion for products which contain pseudoephedrine in liquid, liquid cap or gel cap form. Before making the sale the retailer must require and make a record of the identification of the person purchasing the product and must send their purchase log to the Office of Attorney General on a monthly basis. The bill makes it a Class 1 misdemeanor for any person to possess, receive or otherwise acquire more than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base within a thirty-day period. The Act creates an exception for most of the restrictions if the person possesses a prescription from a licensed physician.

Senate Bill 208 establishes and enhances criminal penalties regarding certain sex offenders. The bill increases the mandatory minimum for first degree rape to fifteen years and the mandatory minimum sentence for sexual contact to ten years. The Act requires a psychosexual assessment prior to the offender's sentencing. The bill makes a second felony sexual contact conviction a Class 2 felony. Section 9 requires the prosecuting attorney to prepare a summary description of the offense and forward the description to the Division of Criminal Investigation for inclusion on the sex offender registry and requires the Division of Criminal Investigation to prepare summaries for those persons currently on the registry. The bill clarifies that those persons who are in custody must register as a sex offender and requires sex offenders coming into South Dakota to register within five days. Section 12 creates a Class 5 felony for any person who knowingly assists, harbors, or conceals a sex offender in eluding law enforcement or provides false information regarding the residence or whereabouts of a sex offender. Sections 13 and 14 allow the Board of Pardons and Paroles to determine that an offender is ineligible for parole based upon the psychosexual assessment required by this Act. Section 15 creates a new Class 4 felony for any convicted felony sex offender to threaten or communicate a specific intent to

commit further felony sex offenses. Finally, Section 16 provides immunity to law enforcement personnel for good faith conduct under this Act.

House Bill 1029 prohibits the use of crossbows for fishing unless an exception is granted in rules promulgated by the Game, Fish and Parks Commission.

House Bill 1033 permits persons arrested for certain boating violations to be released upon execution of a promise to appear in court or upon furnishing a bond and to provide a penalty for failure to appear in court. The bill allows a resident arrested for a Class 2 misdemeanor boating offense to be released upon a written promise to appear and a non-resident may be released upon a written summons or upon furnishing a bond. Any person who intentionally violates the written promise to appear is guilty of a Class 2 misdemeanor.

House Bill 1034 revises the definition of anabolic steroid and schedules certain new anabolic steroids. This bill became law on February 13, 2006.

House Bill 1051 revises certain provisions regarding notice to a tribe of a child custody proceeding subject to the Indian Child Welfare Act. The bill requires the officer or party who takes a child into temporary custody to immediately inform the child's parents, guardian, or custodian of the temporary custody and the right to a prompt hearing. If the child's parents, guardian or custodian cannot be located after reasonable inquiry the officer or party taking temporary custody of the child shall report the fact and circumstances immediately to the state's attorney. The state's attorney shall then attempt to notify the child's parents, guardian, or custodian. For hearings the state's attorney or Department of Social Services shall make reasonable efforts to inform the custodian and the designated tribal agent for the Indian child's tribe.

House Bill 1054 revises certain provisions regarding an increase of the prizes that certain lotteries may award. The bill removes the prize cap of \$30,000 and instead requires that the actual value of any lottery prize be stated before any chances for the lottery are sold.

House Bill 1063 clarifies certain provisions concerning the authority of certain courts to issue warrants or summonses on indictment. The bill amends SDCL 16-12C-7 to prohibit clerk magistrates from issuing warrants or summonses on indictment.

House Bill 1064 increases the penalty for subsequent convictions for the crime of stalking. The bill makes a second or subsequent conviction occurring within ten years of a prior conviction a Class 6 felony.

House Bill 1068 requires the names of certain parties to be listed in instruments recorded by the register of deeds.

House Bill 1069 prohibits the public sale of tax certificates.

House Bill 1073 revises the circumstances under which certain arrests may be effected without warrant. The bill amends the mandatory arrest provision of SDCL 23A-3-2.1 to allow for an arrest without a warrant at any time that the opportunity presents itself to the arresting officer. If the officer has probable cause to believe that: a protection order has been violated; a stalking or physical injury protection order has been violated; or, a person has committed a domestic assault within the proceeding forty-eight hours.

House Bill 1074 provides for recognition of certain stalking or physical violence protection orders as foreign domestic violence protection orders.

House Bill 1075 revises certain provisions relating to the disposition of confiscated weapons and firearms. This bill allows arresting agencies to use, trade in, destroy, or sell confiscated weapons or firearms.

House Bill 1084 authorizes counties to regulate the operation of certain off road vehicles in highway ditches. The bill allows boards of county commissioners to prohibit the operation of ATVs along specific section of highways under the county's jurisdiction. Notice of the restriction must be made by placing and maintaining regulatory signs at each end of the section of highway ditch that is closed.

House Bill 1086 restricts the right of certain sex offenders related to adoption or visitation of children. The bill amends SDCL 25-6-4 and allows the court to waive the need for parental consent if the child was conceived as a result of rape or incest. The bill also allows the court to prohibit, revoke, or restrict visitation rights to any child if the parent caused the child to be conceived as a result of rape or incest.

House Bill 1094 clarifies a custodian's access to certain sealed records. The bill amends SDCL 26-7A-116 to clarify that the custodian of a juvenile record or file may inspect or access their own file as necessary for discharge of the custodian's official duties. The bill allows for the court to issue an order restricting even this access.

House Bill 1095 clarifies the elements of the crime of impersonating another. The bill amends SDCL 22-40-1 to include the offering of a fictitious name or a false date of birth as an impersonation offense.

House Bill 1104 revises the elements of the crime of eavesdropping. The bill changes eavesdropping from a general intent crime to a specific intent crime by striking knowingly and inserting intentionally. The bill also updates the definition of a eavesdropping device to reflect changes in technology.

House Bill 1118 revises certain provisions regarding failure to stop at the command of a law enforcement officer and regarding eluding a law enforcement officer in a vehicle. This bill rewrites South Dakota's current eluding provision. The bill makes it a Class 2 misdemeanor for any person to fail to stop at the signal of a law enforcement officer and makes it a Class 1 misdemeanor if the driver of the vehicle attempts to flee from the law enforcement officer or attempts to elude the pursuit of law enforcement. The bill creates the offense of aggravated eluding, a Class 6 felony, which is eluding where the driver operates the vehicle in a manner that constitutes an inherent risk of death or serious bodily injury to any third person.

House Bill 1119 repeals certain mandatory minimum sentences for driving under the influence, expands substances under which a person may be found to be under the influence and revises certain driving under the influence provisions for clarity and consistency. The bill amends SDCL 32-23-1 to include marijuana or any controlled drug or substance not obtained pursuant to a valid prescription or any combination of an alcoholic beverage, marijuana, or controlled drug or substance and includes controlled substances obtained pursuant to a valid prescription if the use of that prescription drug renders the person incapable of safely driving. The bill also adds a new subsection to include any substance ingested, inhaled, or otherwise taken into the body. The bill allows the court to grant a driving permit upon proof of financial responsibility for the purposes of employment, attendance at school, or attendance at counseling programs for any DUI offense. However, Section 15 requires that any driving permit issued by the court to any person for a second or subsequent DUI or any person who has a BAC of 0.17 or above shall be conditioned on the person's total abstinence from the use of alcohol. This section further requires the court to immediately revoke the permit upon a showing of proof by a preponderance of the evidence that the person has used any alcohol. Finally, this bill clarifies how the Division of Motor Vehicles should calculate revocation time when a person is reincarcerated during the revocation period.

House Bill 1132 creates immunity for reporting prenatal alcohol or substance abuse. This bill gives immunity to any physician, physician's assistant, nurse, nurse practitioner, nurse midwife, counselor, social worker, licensed or registered child welfare provider, employee or volunteer of a domestic abuse center,

chemical dependency counselor, or safety sensitive position as defined in SDCL 23-3-64(2) who in good faith makes a referral of a pregnant woman engaged in abusive use of alcohol, abusive use of a lawfully prescribed controlled substance, or use of any controlled drug or substance not lawfully prescribed by a practitioner.

House Bill 1134 revises certain provisions regarding the justifiable use of force. This bill amends SDCL 22-5-9 to clarify that any person may lawfully resist by force or violence the commission of any public offense including against persons of his family or household or any other person threatened with bodily injury. The Act amends SDCL 22-18-4 to allow the use of force or violence when the person reasonably believes that such conduct is necessary to prevent or terminate a trespass or other criminal interference with real property. However, the person may only use deadly force as provided in SDCL 22-16-34 and SDCL 22-16-35. Finally, the Act clarifies that a person does not have a duty to retreat if the person is in a place where he or she has a right to be.

House Bill 1149 revises certain felony and criminal provisions not located in the criminal code. This Act is part of the 2005 criminal code revision and modifies a number of criminal provisions located outside of Title 22. These include acts dealing with the legislature, influencing government, fraudulent application for crime victims compensation, failure to appear to serve a sentence, delivery of contraband, desertion of a child, protection order violations, altering interstate highway gates, trespass at forts, magazines, arsenals or armories, intentional spreading of diseases, selling items with obscured serial numbers, crimes involving livestock sales, violations involving corporate filings and corporate activities, violations involving bank employees, violations involving savings and loan employees, and violations involving insurance.

House Bill 1153 revises the definition of a prohibited sexual act. This bill amends SDCL 22-24A-2(16) to clarify that a prohibited sexual act for the purposes of child pornography includes a bare feminine breast.

House Bill 1180 prohibits certain acts of child abuse and endangerment and provides penalties therefore. This bill makes it a Class 6 felony for any parent, guardian, or custodian to knowingly permit physical or sexual abuse of a child. Further, the bill makes it a Class 1 misdemeanor for any person to knowingly cause a child to be present where any person is using, distributing, or manufacturing methamphetamines.

House Bill 1181 revised certain provisions regarding humane societies. The bill changes how a humane society can be organized and requires that certain actions taken by a humane

society be done through an animal control officer. Section 2 outlines how the board of directors of a humane society may appoint society members to act as an animal control officer after authorization from a circuit court judge. Section 3 clarifies that any law enforcement agencies may enforce the animal cruelty and neglect provisions and that local units of government may contract with animal control agencies to enforce the provisions of SDCL ch. 40-1 and SDCL ch. 40-2. The bill requires that a licensed veterinarian be present during investigations or searches of a commercial breeding operation. Finally, the bill requires that seizures of animals shall be done pursuant to a warrant or court order unless the animal is severely injured, severely diseased, or suffering and any delay would continue to cause the animal extreme suffering.

House Bill 1190 excludes ridden animals and bicycles from violations of the DUI statutes.

House Bill 1199 prohibits the release of information concerning the applicants and holders of permits to carry a concealed pistol. This bill prohibits any governmental agency or employee from knowingly releasing or permitting access to any application, list, record, or registry of applicants or holders of permits to carry a concealed pistol to any person except another law enforcement agency or the Secretary of State.

House Bill 1204 exempts certain persons from jury duty because of religious beliefs. The bill exempts from jury duty any member of a church or religious organization if jury service conflicts with the religious belief of that church or religious organization.

House Bill 1205 provides for an exemption to the record search fee for attorneys of record. The bill provides that the clerk of court may not charge a records search fee if the search is requested by an attorney of record or any member of the attorney of record's law firm or staff.

House Bill 1209 revises certain provisions regarding money lending. This bill further updates and regulates payday loan, title loan and other short term consumer loan businesses.

House Bill 1215 establishes certain legislative findings to reinstate the prohibition against certain acts causing the termination of an unborn human life, to prescribe a penalty therefore, and to provide for the implementation of such provisions under certain circumstances. This bill makes it a Class 5 felony for any person to knowingly administer, prescribe, or procure for a pregnant woman an abortion.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the

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2006 Legislature at the South Dakota Legislative Research
Council's website. The web address is:

<http://legis.state.sd.us/sessions/2006/index.aspx>.

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